

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
DELTA DIVISION

DERRICK "DEWAYNE" MOSS

PLAINTIFF

v.

No. 2:19-cv-152-DPM

SCOTTIE WHITCOMB, Individually and  
in his Official Capacity; DERRICK TIMES,  
Individually and in his Official Capacity; and  
THE CITY OF CLARENDON

DEFENDANTS

ORDER

Status report, *Doc. 20*, appreciated. The Clarendon defendants' motion, *Doc. 17*, is granted as modified. Whitcomb's and Times's alleged rough treatment of Moss is the subject of a pending criminal case. Moss's civil claims against Whitcomb and Times relate so closely to the criminal charges that they can't effectively defend against both. *Koester v. American Republic Investments, Inc.*, 11 F.3d 818, 823 (8th Cir. 1993). Defendants' propounding of written discovery is not a waiver of their Fifth Amendment rights. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). For now, Whitcomb and Times don't need to sit for depositions or respond to discovery requests. Moss can continue discovery about Clarendon's practices and policies without asking about Whitcomb or Times or his encounter with them. But, the case is stayed and administratively terminated pending conclusion of the criminal proceedings. Because state and federal trial dates are currently

uncertain, the Court also suspends the Amended Final Scheduling Order, *Doc. 16*. Status report about Whitcomb's and Times's criminal case due by 11 July 2021, and every sixty days thereafter.

So Ordered.

D.P. Marshall Jr.  
D.P. Marshall Jr.  
United States District Judge

15 January 2021